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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/038,404	01/02/2002	Markus Baumann	RD8025 US CIP	8366
23906	7590	03/10/2004		
E I DU PONT DE NEMOURS AND COMPANY LEGAL PATENT RECORDS CENTER BARLEY MILL PLAZA 25/1128 4417 LANCASTER PIKE WILMINGTON, DE 19805			EXAMINER EINSMANN, MARGARET V	
			ART UNIT	PAPER NUMBER
			1751	
DATE MAILED: 03/10/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

AS

<b>Office Action Summary</b>	Application No. 10/038,404	Applicant(s) BAUMANN ET AL.	
	Examiner Margaret Einsmann	Art Unit 1751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☐ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |  |
|---|--|
| <p>1) <input type="checkbox"/> Notice of References Cited (PTO-892)</p> <p>2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)</p> <p>3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br/>Paper No(s)/Mail Date <u>12/19/03</u></p> | <p>4) <input type="checkbox"/> Interview Summary (PTO-413)<br/>Paper No(s)/Mail Date. ____.</p> <p>5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)</p> <p>6) <input type="checkbox"/> Other: ____.</p> |
|---|--|

**DETAILED ACTION**

***Claim Rejections - 35 USC § 103***

Applicant's amendment filed 12/15/03 has been entered and applicant's remarks carefully considered. Claims 1-18 are pending.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-2,4-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Huffman, US 4,043,749 or Kelly, US 5,131,918 or Anton, US 4,078,378 in view of Elgarhy, US 5,681,620, Elgarhy et al. US 5,549,963 , Collier, US 6,387,448 and Pacifici, US 5,925,149.

**Huffman** and **Kelly** and **Anton** disclose dyeing textiles composed of anionic dyeable nylon and cationic dyeable nylon with both acid dyes and cationic yes as applicant claims in step 1(a). See Huffman col 2 lines 45 r seq; see Kelly's abstract and examples 5 and 6 in columns 8 and 9. Anton teaches dyeing fibers having an acid dyeable core surrounded by a basic dyeable sheath with both acid dyes and basic (that is cationic) dyes. Accordingly the dyed textile surface claimed in step 1(a) is well known in the art. Neither reference teaches treating the above dyes substrate with a

stainblocker. The two **Elgarhy** patents and **Collier et al.** teach treating acid dyeable nylon, that is unmodified nylon 6 or nylon 66 or both, with stainblockers.

**Elgarhy et al., 5,549,963** discloses many stain blockers for use with nylon 6 and nylon 66 in column 10. They are both anionic and nonionic, and include resoles and acrylics. Example 1 discloses treating nylon 66 in an exhaust process with 2.0% resole A at a pH of 2.5 at 75° C for twenty minutes, rinsing and drying. See column 9 lines 59-63. The evaluation is done on a scale of 1-8. Initial stain resistance of that treated example was 8 on a scale of 1-8. Accordingly, it appears to be at least equivalent to applicant's claimed stain resistance of 9 on a scale of 1-10 because on Elgarhy's scale, 8 is excellent stain resistance. See col 7 line 15. Elgarhy, 963 gives the general instructions for applying the stain resist at col 6 lines 44 et seq. They may be applied by exhaust or continuous methods such as padding, flooding, foam or spray, at a pH of below 5.

**Elgarhy, 5,681,620** disclose treating nylon with stain blockers by either continuous or exhaust methods. He states that in all methods the solution of stain resist can be applied at a hot or cold temperature. Col 7 lines 22—64. Padding, rinsing and drying is described in col 7; treating for 20 minutes at a pH of 2-3, rinsing, squeezing and drying is described in col 8 second paragraph.

**Collier et al.** list all application types See col 7 lines 17-58. They state that the temperature at which the fibers are contacted by the aqueous solution may range from ambient to up to 100°C, inclusive of applicant's claimed range. The substrate may be

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dried with steam, forced air heat or microwave heat, which is inclusive of applicant's drying range.

The above three references do not teach treating the substrates of Huffman or Kelly or Anton which comprise both acid dyeable and cationic dyeable fibers with stainblockers. They teach only regular nylon 6 or nylon 66 as the substrate.

**Pacifici** is applied for his teaching that cationic dyeable nylon is inherently resistant to acid dyes, which is the stain that applicant's stain blockers are resisting. See col 3 lines 15-17.

It would have been obvious to one having skill in the art, a textile engineer, to apply the stain resist (stainblocker) to the substrates of Huffman or Anton or Kelly by the methods taught by Elgarhy and/or Collier even though those three references do not treat the blended textile comprising both acid dyeable and cationic dyeable nylon because they teach that the acid dyeable fiber portion will be protected by the stain resist treatment, while Pacifici teaches that the cationic portion is inherently acid dye stain resistant, thereby not needing a separate stain blocking treatment. Regarding the limitations of whether the substrate is a carpet tile, and at which step in the procedure the tiles are cut, that appears to be a matter of design choice, as applicant has shown that the order of that step is irrelevant by claiming several variations of that process step. Regarding whether the process is applied to a tile, the dyes and stain resists react with the fibers in the substrate, regardless of its shape.

### ***Response to Arguments***

Applicant's arguments filed 12/15/2003 have been fully considered but they are not persuasive regarding the above rejection.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., Applicant argues that steam is not used in the present invention and that the time of heating is critical) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Applicant's claims are comprising claims, and there is no statement that the process is carried out in the absence of steam. Applicant further states that his process requires exposure to temperatures **above 70°C** for a very short period of time. There is no period of time recited in the rejected claims, and the application step (step b) takes place at 20-95° C. Applicant states on page 10 of the response, "the limitations of time and temperature which are both critical to impart commercially effective stain resistance to fabrics..." As stated above, there is no time recited in the claims, applicant's statement of the critical temperature of application is not the temperature of application as claimed and since the claims are in "comprising" terms, a step of steaming is not excluded.

Claims 1-18 are rejected under 35 U.S.C. 112, second paragraph, as failing to set forth the subject matter which applicant(s) regard as their invention. Evidence that claims 1-18 fail(s) to correspond in scope with that which applicant(s) regard as the invention can be found in the amendment and response filed 12/15/2004. In that paper,

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applicant has stated it is critical that no steam be used (page 8 second and third paragraph), and that , "... complete immersion of the fabric into a bath to expose all of the yarn fibers to stainblocker **at the critical temperature and time interval of 5-30 seconds and preferably at 5-10 seconds** (page 9 lines 9-11), along the length of each tuft" and applicant claims that application is at above 70° while the claims state that application is at 20-95°C. These statements indicates that the invention is different from what is defined in the claim(s) because there are no claim limitations as to the time of immersion, no limitation that steam may not be used and the application temperature is different as claimed. Any critical limitations must be claimed.

### ***Conclusion***

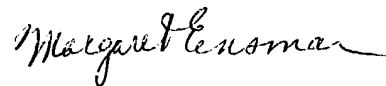
**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Margaret Einsmann whose telephone number is 571-272-1314. The examiner can normally be reached on 7:00 AM -4:30 PM M-Th and alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on 571-272-1316. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9306 for regular communications and (703) 872-9306 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571-272-0994.



Margaret Einsmann  
Primary Examiner  
Art Unit 1751

March 5, 2004